IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 331 OF 2006.
IN
FIRST APPEAL NO. 419 OF 2001.

Mrs.Krishna R.Verma. ... Applicant.
Versus.
Kripal Singh and others. ... Respondents.

Shri Rajendra Sorankar for the Applicant.

Shri A.K.Molly for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 27th July, 2006.

P.C.:

1. The Applicant is permitted to carry out amendment in the names of Respondents No.3 and 4. Amendment to be carried out within a period of three weeks.

2. Submissions of the learned Advocates appearing for the parties were heard on the last date. The Applicant in this Application is the Respondent No.1 in the First Appeal. The Respondent No.1 in this Application is the Appellant in the First Appeal, who is the original Plaintiff.

3. The Respondent No.1 filed a suit for declaration that he is the absolute owner of flat/shop No.6 admeasuring 559 sq.ft. situated in Ashish Cooperative Housing Society, J.P.Road, Andheri (West), Mumbai. Another prayer in the suit was for declaration that the Award passed in a dispute by the Cooperative Court is

improper and without jurisdiction. A prayer was also made for appointment of the Court Receiver. The other prayers were for interim relief. The suit filed by the Respondent No.1 herein has been dismissed by the trial Court after a complete trial. The First Appeal takes exception to the said decree. The learned trial Judge recorded a finding that the Respondent No.1 herein has failed to prove that he is the owner of the suit premises. The prayer in this application is that the Respondents Nos.3 and 4 be directed to execute necessary agreement with in favour of the Applicant in respect of the suit premises for facilitating redevelopment of the entire property and for allotment of accommodation in the redeveloped property.

4. The case made out in this application is that the building in which the suit premises are situated is in dilapidated condition. It is alleged that the 4th Respondent in this Application i.e. the Cooperative Housing Society has passed a Resolution in a Special General Body meeting by which it is resolved to appoint a particular Developer for the purpose of developing the property by demolishing the existing building in which the suit premises are situated and for reconstructing the building. According to the Applicant, the Resolution provides that after reconstruction of the building, the members will be rehoused by allotting them premises in the newly constructed building. The

Applicant relies upon the decision of the Cooperative Appellate Court dated 26th October 1993 to which the Applicant herein, Respondent No.1 and Respondent No.4 were parties. By the Judgment and Award dated 16th December 1991 passed by the Cooperative Court, the Respondent No.1 in this Application was held to be a trespasser and was directed to hand over possession of the suit premises to the Applicant in this Civil Application. By Judgment and order dated 26th October 1993, the Cooperative Appellate Court confirmed the said Award passed by the Cooperative Court. The order of the Cooperative Appellate Court has been confirmed by this Court in a writ petition.

5. In the suit filed by the 1st Respondent, one of the prayers was for a declaration that the original decision of the Cooperative Court is illegal. My attention is also invited to the order dated 16th July 2006 passed in the First Appeal and ad-interim order passed therein by which any transaction made by the Applicant is made subject to the further orders passed by this Court.

6. It is not in dispute that the Applicant is in possession of the suit premises at present. There is also no dispute that the building in which the suit premises are held is of the ownership of a Cooperative Society. If the Cooperative Society has decided to

demolish the existing building and to construct a new building in its place and allot premises to all the members in the reconstructed building, the process of redevelopment of the building cannot be stalled only because the First Appeal is pending in this Court. Whether the property is to be developed by demolishing building No.4 or not is for the Respondent No.4-society to decide. The only question is how to protect the rights of both the parties if the property is redeveloped and new premises is allotted in lieu of the suit premises. If the 1st Respondent finally succeeds in establishing in Court of law his entitlement to possession of the suit premises, the redevelopment will enure to the benefit of the 1st Respondent. Therefore, it will also be in the interest of the 1st Respondent if the redevelopment of the building is permitted.

7. Hence the Civil Application is disposed of by the following order:

i) It will be open for the Applicant to enter into agreement with the Respondent No.4-society and with the developer appointed by Respondent No.4-society for surrender of the suit premises for facilitating reconstruction of the building and for allotment of a premises in the newly constructed building in lieu of the suit premises.

ii) Before entering into such agreement, the Applicant will give notice of pendency of the present Appeal to the Developer and to the society and a clause will be incorporated in the agreement to the effect that the agreement between the Applicant and the society and the developer will be subject to the final outcome of the Appeal and is subject to the rights of the 1st Respondent in this Application.

iii) The Applicant will be entitled to occupy the newly allotted premises in lieu of the suit premises only after the Applicant files an undertaking in writing in this Court to the following effect:

. (a) That he will not claim any equity on the basis of this order and on the basis of the agreement executed in his favour;

. (b) That he will occupy the newly allotted premises subject to the final outcome of the First Appeal;

. (c) That he will not create any third party interest and will not part with the possession of the newly allotted premises till final

disposal of the First Appeal;

. (d) That the agreement executed by him for allotment of new premises and his possession of the new premises will be subject to the appropriate final order which may be passed in the First Appeal.

iv) The Applicant is restrained from creating any third party interests in respect of the suit premises and is also restrained from handing over possession thereof to any third party, save and except to the Respondent No.4-society and/or the developer appointed by Respondent No.4-society for redevelopment of the property.

v) The Applicant will give advance intimation of atleast 7 days to the 1st Respondent before executing the agreement with the society or the developer.

Judge.